

## Inform and Educate Session on Dewey Burdock for Tribal Historic Preservation Officer Representatives

September 10, 2015      Kelly Inn      Bismarck, ND

Valois Shea, Douglas Minter, and Blake Huff with EPA Region 8 opened this session at 1 pm after the ND DOT meeting session had temporarily adjourned before lunch. We passed out copies of our slides to those who remained in the room (note: approximately a dozen people, the names of which we are in the process of confirming using the NDDOT's sign in sheet). Douglas began by presenting slides on EPA's process and policy for informal and formal tribal consultation. A number of THPO representatives provided the following feedback during and immediately following Douglas' presentation:

- EPA needs to include Environmental Directors not just the THPOs in these sessions.
- If this is an informational/educational session, why is it being recorded? (Note: we were initially unaware that the NDDOT, as a courtesy to EPA, had been recording this session as it had for its own meeting through the morning. We requested, and NDDOT agreed, to stop recording at this point in the meeting).
- Tribal Leaders should be able to request formal consultation, not wait for EPA to invite them.
- Is EPA really here to help us? Can we trust EPA and other federal agencies through this process?
- We are concerned about the use of water and where EPA is going to dispose of it.
- Steve Vance, Cheyenne River Sioux's THPO, said that his Environmental Director has not really engaged in cultural resource issues. But as THPOs, we should also consider environmental impacts as both environmental and culture resources are interconnected.
- EPA needs to address environmental impacts globally, not just through its regulatory process or look at just water or air or land impacts.
- Steve asked about the term "aquifer exemption" (Note: we asked Steve to hold this question and did define it later in Valois' presentation. As noted below, we also followed up by emailing him the regulatory language).
- Dennis Yellow Thunder, THPO for the Ogallala Sioux Tribe (OST), is concerned about reverse osmosis treatment of produced water, which removes all essential nutrients. This is not consistent with natural law. Water is sacred.
- We need funding to attend a future RTOC meeting with our Environmental Directors. (Note: EPA confirmed that the next meeting will be held in Minot, ND).
- Emails or calls with EPA are not "consultation."
- EPA Region 8 needs to coordinate with other Regions to include Tribes outside of Region 8.
- What about cumulative effects not related to EPA's programs?
- EPA should be engaged in all environmental issues, not just those under EPA's jurisdiction.
- How often does EPA do studies of water and air quality to address environmental impacts? These should be done monthly and quarterly.
- Dennis took about 45 minutes to update everyone on what he knows about the Dewey Burdock ISR project beyond what was included in EPA's slides. This included: 1) NRC's licensing and scope of work at a number of ISR uranium sites including Dewey Burdock in South Dakota and Crow Butte in Nebraska; 2) the issues raised by the OST to the NRC on Dewey Burdock as contentions. These transcend this project as they are similar for other ISR sites; 3) a chronology of NRC and ASLB events on Dewey Burdock including tribal contentions on the draft and final SEIS; and 4) a listing of past and current contentions presented to, and being considered by, the ASLB.

- Dennis stated that EPA needs to take a hard look under NEPA at its UIC permitting-related impacts. Are there adequate mitigation measures?
- Dennis stated that EPA should conduct a cultural resources survey of all of the acreage on the DB project site, not just what NRC has done so far. Steve agreed that this should include water and air quality studies by EPA.
- Dennis is concerned that the OST will bear the full impact from the Dewey Burdock project being downstream, etc.
- Dennis says EPA needs to take a hard look at least 25 to 30% of the 4,000 borehole logs at the Dewey Burdock project site.
- Dennis says we need to meet with EPA more often.
- Rosebud Sioux's archeologist, Ben Rhodd, stated that EPA needs to address impacts to endangered species, including a short horned lizard.

Note: at this point in the meeting (mid-afternoon), seven THPO representatives remained in the room.

- Steve says we need EPA to survey of ALL cultural resources. He is concerned that NRC went with a low bid and did not want to do more.
- Steve asked where EPA gets its funding. (Note: we briefly described how EPA's UIC program receives its funding).
- Steve says that EPA needs to fund its own meetings and find additional resources to engage in more tribal outreach since tribal leadership can change often. He is concerned that Powertech has paid for some of NRC's own work (e.g., the cultural resources survey).
- Steve would like to see EPA's policies regarding general and NHPA consultation. Do these address our concerns expressed today? (Note: after the meeting, we emailed him a link to EPA's 2011 consultation policy and EPA's responses to comments it received in developing this policy.)

Note: We temporarily adjourned to let the NDDOT return and complete some remaining business with the THPO representatives. We then re-adjourned at 4:30 pm. We asked, and the remaining THPO representatives agreed, that Valois be able to present her slides on the Dewey Burdock project. During and after Valois presented her slides, we received the following additional feedback:

- Dennis expressed a general concern about the aquifer exemptions.
- Steve requested a copy of EPA's aquifer exemption regulation by email (Note: we emailed him the regulatory language at the end of the meeting).
- EPA should be monitoring ground water quality at the DB project, not Powertech.
- Dennis does not want to have an adversarial relationship with EPA, but EPA must consider the impacts from this project including seismic potential.

Note: at this point in the meeting (late afternoon) only four THPO representatives remained in the room.

- Steve asked how effects related to NHPA consultation can be considered when not all of these effects will be known until after the project begins operating. He believes we need to identify all of the sacred sites first, before allowing any surface disturbances.
- Dennis and Steve agreed that EPA needs to consider all of the contentions brought to the ASLB's attention.

- Steve will recommend to his Tribal Council that they oppose this project.
- Would EPA authorize Powertech to act on its behalf regarding its duty to consult on NHPA?
- EPA should determine the extent of the aquifer exemption boundaries, not Powertech.
- Steve asked for a copy of our minutes.
- We adjourned at 7 pm.